

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 31, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. John Parker (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 222, HB 349, HB 363, 1/20/2005
Executive Action: HB 333-Tabled, HB 313-Tabled, HB
313-Do Pass; HB 262-Do Pass As
Amended

HEARING ON HB 222

Sponsor: REP. DON ROBERTS, HD 56, BILLINGS

Opening Statement by Sponsor:

REP. DON ROBERTS (R), HD 56, opened the hearing on HB 222, Limit damages for care related to traumatic condition. REP. ROBERTS stated that this bill would put on a limit on non-economic damages of \$50,000.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28}

Proponents' Testimony:

Tom Ebzery, St. Vincent Health Care, Holy Rosary and St. James Medical Center, rose in support of HB 222 and stated that this bill would extend the "Good Samaritan" rule to the Emergency Room.

Mr. Ebzery spoke to the committee about the "civil damages" aspect of this proposed law and the exact criteria of what HB 222 would cover.

EXHIBIT(juh24a01)

{Tape: 1; Side: A; Approx. Time Counter: 28 - 103}

Mike Foster, St. Vincent's Healthcare, rose in support of HB 222 and spoke of the increase in premiums for insurance rising tenfold.

{Tape: 1; Side: A; Approx. Time Counter: 103 - 130}

Corby Freitz, physician-St. Vincent Healthcare, informed the committee that he is an Emergency Room physician in the trauma center at St. Vincent Hospital in Billings. There are four trauma centers in Montana: two in Billings, one in Missoula and one in Great Falls. Dr. Freitz related the story to the committee about the trauma center physicians in Pennsylvania who went on strike due to the high cost of insurance.

{Tape: 1; Side: A; Approx. Time Counter: 130 - 181}

Jim Boslough, physician-St. Vincent Healthcare, rose in support of this bill. He spoke to the committee about the "golden hour," where that one hour is most critical in saving a patient's life. Dr. Boslough informed the committee members about the shortage of physicians that are available for trauma cases.

{Tape: 1; Side: A; Approx. Time Counter: 181 - 249}

Pat Melby, Montana Medical Association, spoke to the committee about the possible amendment that would be needed in reference to the language regarding:

- 1) the hospital needs to include critical care.
- 2) definition for physicians and dentists.
- 3) \$50,000 limit re: non-economic as in 25-9-411 MCA.

{Tape: 1; Side: A; Approx. Time Counter: 249 - 281}

John Flink, Montana Hospital Association, rose in support and stated that the rates have increased without an increase in claims.

{Tape: 1; Side: A; Approx. Time Counter: 281 - 305}

Barb Ranf, Montana Chamber of Commerce, rose in support of HB 222 and also would support the amendments.

{Tape: 1; Side: A; Approx. Time Counter: 305 - 314}

Opponents' Testimony:

Al Smith, Montana Lawyers Association, rose in support of HB 222. **Mr. Smith** spoke to the committee about the increase in insurance rates and why there is not an increase in claims to warrant the rate increase. He also spoke about the "insurance rate cycle," the impact this bill would have on the rights of patients and the medical costs incurred by the patient.

[EXHIBIT\(juh24a02\)](#)

[EXHIBIT\(juh24a03\)](#)

[EXHIBIT\(juh24a04\)](#)

[EXHIBIT\(juh24a05\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 314 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 87}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS was the first to question **Mr. Ebzery**. The REPRESENTATIVE asked **Mr. Ebzery** if he could state that insurance would go down if this bill were enacted. **Mr. Ebzery** replied, "No, no one is saying that rates would go down." **REP. HARRIS** and **Mr. Ebzery** then discussed the facts that there is only two insurance companies in Montana that "write" insurance for malpractice.

REP. NOENNIG then began his questioning of Mr. Ebzery. He was interested in the reason why insurance rates continue to increase. **Mr. Ebzery** responded to the REPRESENTATIVE that he would try to compile some information that would support the increase in rates. He did state that the Doctors' Company and Utah Medical are the only companies in Montana that provide medical malpractice insurance and this bill could be a tool to encourage other insurance companies to come to Montana.

REP. DRISCOLL then queried Mr. Ebzery about the \$250,000 cap and if it is too high. **Mr. Ebzery** stated that it was not. The REPRESENTATIVE and Mr. Ebzery then discussed the insurance reform that has occurred in California.

REP. MCGILLVRAY posed his questions to Mr. Smith regarding the loss of income from potential problems in the ER and if \$50,000 would be enough if a patient were never able to work again.

REP. GUTSCHE then asked Mr. Smith about whether or not a cap of \$50,000 was placed on lawsuits; and if that would encourage more insurance companies to come to Montana. **Mr. Smith** replied, "...I didn't see how that would help; when the cap is only involving ER/Trauma physicians." The REPRESENTATIVE and Mr. Smith continued to discuss the various insurance reform bills that are being brought forth in this session.

{Tape: 1; Side: B; Approx. Time Counter: 87 - 324}

Closing by Sponsor:

REP. ROBERTS closed the hearing on HB 222 and stated that ER physicians are different from standard care physicians and that SJR 32 is another piece of similar legislation being brought forth this session.

{Tape: 1; Side: B; Approx. Time Counter: 324 - 480}

HEARING ON HB 349

Sponsor: **REP. ALAN OLSON, HD 45, ROUNDUP**

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 349**, Revise responsibility of law enforcement officers for intoxicated persons. The REPRESENTATIVE spoke to the committee about the difficulties officers have when attempting to determine whether a person is intoxicated or incapacitated and the officer's responsibilities in that situation.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 30}

Proponents' Testimony:

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of HB 349.
{Tape: 2; Side: A; Approx. Time Counter: 30 - 43}

Pam Bucy, Assistant Attorney General, rose in support of this bill. **Ms. Bucy** explained to the committee that she had met with the Montana Municipal Insurance Agency and the Montana Chiefs of Police in reference to this bill. The big question for officers is what to do with people who are intoxicated as it is not against the law in Montana to be intoxicated in public.

She further informed the committee that the jails do not want drunk individuals, nor do the hospitals; and there is only one "detox" center in the state which is in Billings.

Ms. Bucy stated that this bill has a blanket immunity provision; however, some good faith by law enforcement is needed as stated in 45-15-406 MCA.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 110}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in opposition to HB 349. He spoke of the public policy and that Montana has failed to provide treatment for intoxicants. He stated that in this bill absolute immunity would be given to officers and that currently those officers already have that immunity. **Mr. Smith** continued with his testimony by asking, "Where is the compelling state interest for this bill." **Mr. Smith** stated, "...instead of this bill, why doesn't Montana provide treatment for these people?"

{Tape: 2; Side: A; Approx. Time Counter: 110 - 157}

Tim Dick, attorney, rose to oppose HB 349. Mr. Dick was also opposed to the amendments. He related a story to the committee about his client who was intoxicated and then injured after a law enforcement officer intervened and returned the man to the intoxicant's own place of residence.

{Tape: 2; Side: A; Approx. Time Counter: 157 - 204}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. DRISCOLL queried the sponsor about a situation in her home district where a tavern is located and where many homeless people convene. She asked, "...would this bill limit the police taking action in that area." **REP. OLSON** replied, "No, it would not."

REP. LANGE posed his questions to Mr. Smith. The REPRESENTATIVE related a story to the committee and Mr. Smith about the person in Billings who had suffered a stroke; however, law enforcement perceived that person as intoxicated and did not transport that person to a hospital for treatment. There was a lawsuit filed and a \$2 million award for that person. **REP. LANGE** wanted to know if this bill would alter that process. **REP. OLSON** stated that this bill would take away the requirement of law enforcement to take a person to a hospital immediately. **REP. LANGE** stated that he was leery of officers having to make judgement calls regarding someone's well-being.

The REPRESENTATIVE then asked Mr. Smith if HB 349 would take out the criminality factor. **Mr. Smith** replied that in Section 1 it would keep in but would take out of Section 2.

REP. BECKER asked the sponsor if there is a definition in statutes for "incapacitated?" **REP. OLSON** replied, "Yes, in 53-24-104, MCA."

REP. HARRIS then began his questioning of Ms. Bucy. He was interested in whether or not the immunity provision could affect the "good faith act." **Ms. Bucy** responded that this bill would give officers more capabilities and options to handle the situation. **REP. HARRIS** was also interested in the compelling state interest for this bill. **Ms. Bucy** replied that this bill is about giving law enforcement more of a reason to take action. As it is right now, **Ms. Bucy** stated that there are huge lawsuits regarding this issue and the money awarded in lawsuits is "killing" local government budgets.

{Tape: 2; Side: A; Approx. Time Counter: 204 - 491}

Closing by Sponsor:

REP. OLSON closed the hearing on HB 349 by saying that there must be some incentives to have officers to do the "right thing." The REPRESENTATIVE referred to 53-24-303, MCA for the definitions of intoxicated and incapacitated. **REP. OLSON** remarked to the committee members that he would work on amendments.

{Tape: 2; Side: A; Approx. Time Counter: 491 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 58}

HEARING ON HB 363

Sponsor: REP. EMELIE EATON, HD 58, LAUREL

Opening Statement by Sponsor:

REP. EMELIE EATON (D), HD 58, opened the hearing on HB 363, Revise misdemeanor assault with bodily fluid. The REPRESENTATIVE explained to the committee that this bill would include healthcare and emergency workers responding to an emergency be included in assault with bodily fluid.

{Tape: 2; Side: B; Approx. Time Counter: 58 - 68}

Proponents' Testimony:

Pat Wise, Montana Nursing Association, rose in support of HB 363. Ms. Wise stated that this bill should not include lower mental functioning individuals.

{Tape: 2; Side: B; Approx. Time Counter: 68 - 77}

Pat Clinch, Montana Council of Professional Firefighters, stated that the firefighters are usually the "first on the scene" and need the protections of this bill.

{Tape: 2; Side: B; Approx. Time Counter: 77 - 89}

Steve Gibson, Department of Corrections-Youth Services Administration, rose in support and stated that emergency response individuals are not presently covered under statutes.

{Tape: 2; Side: B; Approx. Time Counter: 89 - 95}

Beda Lovitt, Montana Medical Association, rose in support of HB 363.

{Tape: 2; Side: B; Approx. Time Counter: 95 - 100}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LANGE asked the sponsor about Line 14 of HB 363, "or knowingly" stricken from the language. REP. EATON produced a note from Mr. MacMaster explaining why that language was struck.

EXHIBIT ([juh24a06](#))

REP. STOKER asked the sponsor why this bill does not include "all people" in the language. **REP. EATON** explained that HB 363 is trying to target those whose profession brings them to the emergency situation.

REP. RICE then inquired of the sponsor about the frequency of this type of situation that HB 363 addressed. **REP. EATON** replied, "Occasionally."

{Tape: 2; Side: B; Approx. Time Counter: 100 - 170}

Closing by Sponsor:

REP. EATON closed the hearing on HB 363 and stated to the committee that this bill is a simple request to extend the list of victims who by their profession are more likely to come in contact with bodily fluids.

{Tape: 2; Side: B; Approx. Time Counter: 170 - 205}

EXECUTIVE ACTION ON HB 363

Motion: **REP. GUTSCHE** moved that HB 363 DO PASS.

Discussion:

The committee discussed HB 363 as to what penalties would occur for the offenders, if an amendment would be applicable to include "all people" and that this is a "designer bill."

Mr. MacMaster informed the committee that these crimes are already covered in statutes by a law in 1999 after incidents at Montana State Prison with inmates and the guards.

Substitute Motion/Vote: **REP. STOKER** made a substitute motion that HB 363 BE TABLED. Substitute motion failed 6-12 by roll call vote with **REP. CLARK**, **REP. EVERETT**, **REP. NOENNIG**, **REP. RICE**, **REP. STOKER**, and **REP. WINDHAM** voting aye.
(**REP. PARKER** voted no by proxy vote.)

Discussion:

The discussion continued with debate over the scope of the bill and the possibility the language is too broad and whether or not the bill should include more professions.

Substitute Motion/Vote: REP. HARRIS made a substitute motion that HB 363 BE INDEFINITELY POSTPONED. Substitute motion carried 17-0 by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 205 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 146}

EXECUTIVE ACTION ON HB 132

Motion: REP. GUTSCHE moved that HB 132 DO PASS.

Discussion:

The committee discussed the possibility of amendments.

[EXHIBIT\(juh24a07\)](#)

Substitute Motion/Vote: REP. LANGE made a substitute motion that HB 132 BE TABLED. Substitute motion carried 11-7 by voice vote with REP. BECKER, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, and REP. WINDHAM voting no.

(REP. PARKER voted no by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 146 - 327}

EXECUTIVE ACTION ON HB 262

Motion: REP. LANGE moved that HB 262 DO PASS.

Discussion:

The committee discussed the number of municipal judges currently in the State of Montana and qualifications for those part-time judges.

Motion/Vote: REP. LANGE moved that HB 262 BE AMENDED with language for qualifications. Motion carried unanimously by voice vote.

(REP. PARKER voted yes by proxy vote.)

Motion: REP. STOKER moved that HB 262 DO PASS AS AMENDED.

Discussion:

The committee then discussed the definition of part-time.

Vote: Motion that HB 262 DO PASS AS AMENDED carried unanimously by voice vote.

(REP. PARKER voted yes by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 327 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 158}

EXECUTIVE ACTION ON HB 313

Motion/Vote: REP. WARD moved that HB 313 DO PASS. Motion carried unanimously by voice vote.

(REP. PARKER voted yes by proxy vote.)

{Tape: 3; Side: B; Approx. Time Counter: 158 - 172}

EXECUTIVE ACTION ON HB 333

Motion: REP. STOKER moved that HB 333 DO PASS.

Discussion:

The committee discussed regulations regarding any traffic signs, the radar signs and that this bill does not solve the problem.

Substitute Motion/Vote: REP. STOKER made a substitute motion that HB 333 BE TABLED. Substitute motion carried unanimously by voice vote.

(REP. PARKER voted yes by proxy vote.)

{Tape: 3; Side: B; Approx. Time Counter: 172 - 301}

ADJOURNMENT

Adjournment: 12:17 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh24aad0.TIF](#))